

Jan-23-2004 15:15

From-BROWDY NEIMARK

2027373528

T-961 P.001/004 F-956

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Michal EISENBACH-SCHWARTZ  
 Application No.: 09/218,277 Conf. No. 3311  
 Filed: December 22, 1998  
 For: ACTIVATED T-CELLS, NERVOUS SYSTEM ...

Art Unit: 1647

Examiner: S. Turner

Washington, D.C.

Atty.'s Docket: EIS-SCHWARTZ-1A

Date: January 23, 2004

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VIA TELEFACSIMILE

THE COMMISSIONER OF PATENTS  
 2011 South Clark Place, Mail Stop Non-Fee Amendment  
 Crystal Plaza Two, Lobby, Room 1B03  
 Arlington, VA 22202

Sir:

Transmitted herewith is a ☐ Amendment ☒ Request to Withdraw Final Rejection and Issue a Restriction Requirement  
 in the above-identified application.

☐ Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.

☒ No additional fee is required.

☐ The fee has been calculated as shown below:

(Col. 1)	(Col. 2)	(Col. 3)
CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	MINUS -- 20	0
INDEP.	MINUS *** 3	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM		

SMALL ENTITY	
RATE	ADDITIONAL FEE
x 9	\$
x 43	\$
+ 145	\$
ADDITIONAL FEE TOTAL	

OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE
x 18	\$
x 86	\$
+ 290	\$
TOTAL	

- \* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.  
 \*\* If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.  
 \*\*\* If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.  
 The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time  
 If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

☐ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity  
 Response Filed Within  
☐ First - \$ 55.00  
☐ Second - \$ 210.00  
☐ Third - \$ 475.00  
☐ Fourth - \$ 740.00  
 Month After Time Period Set

Other Than Small Entity  
 Response Filed Within  
☐ First - \$ 110.00  
☐ Second - \$ 420.00  
☐ Third - \$ 950.00  
☐ Fourth - \$ 1480.00  
 Month After Time Period Set

☐ Less fees (\$ ) already paid for month(s) extension of time on

☐ Please charge my Deposit Account No. 02-4038 in the amount of \$

☐ Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$

☐ A check in the amount of \$ is attached (check no. ).

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.18 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK, P.L.L.C.

Attorneys for Applicant(s)

By:   
 Roger L. Browdy  
 Registration No. 25,618

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Atty. Docket: EIS-SCHWARTZ=1A

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Appln. No.: 09/218,277	)	Art Unit: 1647
Filed: December 22, 1998	)	
For: ACTIVATED T-CELLS,	)	Examiner: S. Turner
NERVOUS SYSTEM ...	)	
	)	Washington, D.C.
	)	
	)	January 23, 2004
	)	VIA TELEFACSIMILE

REQUEST TO WITHDRAW FINAL REJECTION OF MAY 20, 2003, AND ISSUE  
A RESTRICTION REQUIREMENT

Honorable Commissioner for Patents  
U.S. Patent and Trademark Office  
2011 South Clark Place  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Sir:

The present Continued Prosecution Application was  
filed on February 24, 2003. Paragraph 9 of the cover letter  
to the CPA stated:

Applicants hereby expressly state for the  
record that they do not wish to necessarily  
be bound to the election which was made in  
parent application no. 09/218,277. Claims  
to non-elected inventions in the parent case  
appear in the present application and it is  
requested that, if the examiner still  
believes restriction to be necessary, a  
restriction requirement be repeated in the  
present application so that applicants will  
have another opportunity to decide which

Appln. No. 09/218,277

group of claims they wish to elect for prosecution in the present application. If a group of claims other than those elected in the parent case is elected in the present application, then the designation of the present application as a continuation will be changed to that as a division.

In the official action of May 20, 2003, in section 5, the examiner referred to the restriction requirement set forth in the paper of October 22, 2002, deemed the requirement proper and made it final. Thus, the examiner still believes that a restriction requirement is necessary. It is therefore apparent that the examiner overlooked the express statement in the CPA papers that applicant did not wish to be bound by the election requirement made in the parent application.

Accordingly, it was incumbent upon the examiner to issue a new restriction requirement to give applicant an opportunity to change the election if applicant deemed fit. In this regard, the examiner is invited to MPEP 201.06(d) in the section entitled "Prior Election", which states that an election made in the prior application carries over to the CPA only if the CPA does not contain an indication that a shift in election is desired. As the CPA indicated that applicant wished the opportunity to decide whether or not to shift the election and explicitly asked for a new restriction requirement, there was no justification to cause the previous election to carry over.

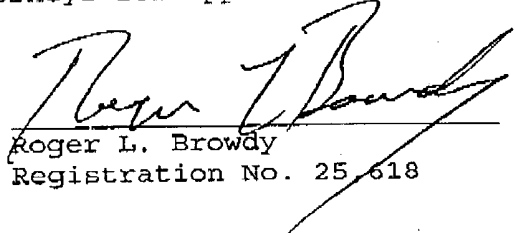
Appln. No. 09/218,277

Accordingly, withdrawal of the final rejection of May 20, 2003, and issuance of a restriction requirement is earnestly solicited.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By

  
Roger L. Browdy  
Registration No. 25,618

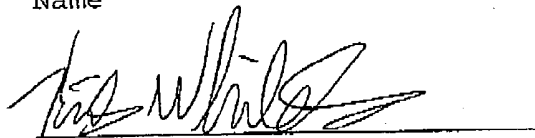
RLB:gkw  
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office (703) 872-9306 on the date shown below.

Kirk Whitehead

Name



Signature

1/23/04

Date